

ESTATE OF COMEDOWN (CORNELIUS LOUIS) TAWATOY

IBIA 77-59

Decided February 28, 1978

Appeal from a Modification Order modifying an Order Determining Heirs.

Reversed.

APPEARANCES: Edith B. Williams George and Betty Jean Samuels Bueno, Appellants, pro se; David S. Hall, Appellee, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Administrative Law Judge Robert C. Snashall, issued an Order Determining Heirs on March 25, 1977, wherein he found that the decedent, Comedown Tawatoy, Flathead Allottee No. 2419, died testate on February 4, 1974. He further found in accordance with the laws of the States of Idaho, Montana, and Oregon, the decedent's heirs at law were the following nieces and nephews:

Julius Hall	one-eighth
Agnes Hall Hurst	one-eighth
David Stephen Hall	one-eighth
Louise Hall Moe	one-eighth
Edith B. Williams George	one-eighth
Betty Jean Samuels Bueno	one-eighth
Mary Louise Lavadour Stover	one-eighth
Arnold Frederick Lavadour, Jr.	one-eighth

Certain of the aforementioned nieces and nephews contested decedent's will for the reason that they felt he was not of sufficient competence and capacity to be able to properly and legally execute a last will and testament. In order to avoid litigation because of the apparent substantial and complex issues involved in contesting the will, a compromise settlement was reached by the nieces and nephews referred to supra, wherein it was agreed that distribution would be made in accordance with the laws of intestacy. This compromise agreement and settlement was approved by Judge Snashall with a caveat regarding Idaho property, all of which were included and made a part of said order and accordingly not reiterated here.

A petition for rehearing was timely filed on May 4, 1977, by David S. Hall. In substance, he contended that Edith B. Williams George and Betty Jean Samuels Bueno were not heirs at law and therefore not entitled to share in the estate in accordance with said order and its enabling compromise settlement.

Judge Snashall issued a Modification Order on July 21, 1977, wherein he stated:

An examination of the records and documents filed by petitioner and Edith B. Williams George indicate clearly there was substantial grounds for a contention by Edith B. Williams George and her sister Betty Jean Samuels Bueno that they were nieces of the instant decedent. The records reflect there was substantial evidence produced many, many years ago tending to support Edith B. Williams George's contention that she and her sister Betty Jean Samuels Bueno were the children of Elizabeth Tawatoy Williams Samuels who was in turn the half sister of this decedent. However, an examination of the files and records of the probate of the estate of this decedent's father, Comedown Tawatoy, Umatilla Allottee No. C-392, Probate No. 66752-14, and that of his mother, Mary Cook, Nez Perce Allottee No. 1062, Probate No. 97124-14, disclose the crux of the question for determination here, the paternity of Elizabeth Tawatoy Williams Samuels, has already been finally determined by the Department of the Interior after full investigation and hearing and that based upon that determination Edith B. Williams George and Betty Jean Samuels Bueno are not heirs at law in this estate.

* * *

There has been no showing here of new evidence tending to impune [sic] the integrity of the Department's earlier findings. In fact the files, documents and records taken in total clearly reflect that although many attempts have been made over the years to show a blood relationship between the said Tawatoy and Elizabeth Tawatoy Williams Samuels no such relationship has been held to exist. Accordingly, at this juncture I find no basis for upsetting this long term determination of the Department.

NOW, THEREFORE, IT IS HEREBY ORDERED the Order Determining Heirs of March 24, 1977, is modified so as to delete therefrom as heirs at law Edith B. Williams George and Betty Jean Samuels Bueno, and IT IS FURTHER ORDERED that the fractioned interest to be taken by the named heirs in the said Order is modified from 1/8 to 1/6.

The record is before the Board on appeal.

Although we agree that the determination made in the estate of Comedown Tawatoy and Mary Cook concerning the paternity of Elizabeth Tawatoy Williams Samuels may be final with respect to those estates, we cannot agree that Edith B. Williams George and Betty Jean Samuels Bueno, the Appellants herein, are foreclosed from resurrecting the paternity of Elizabeth Tawatoy Williams Samuels for the purpose of this probate.

We consider the available evidence concerning the paternity of Elizabeth Tawatoy Williams Samuels to be sufficient to support a potential claim by the Appellants as apparent heirs against the decedent's estate; accordingly Appellants satisfy the definition of "parties in interest" under departmental regulations. See 43 CFR 4.201(i).

We further find that ample consideration passed from the Appellants to the remaining heirs at law to allow their participation in the compromise agreement and settlement as approved by Judge Snashall and included in his Order Determining Heirs dated March 25, 1977.

It appears from a review of the record that decedent at the time of his death was possessed of Indian trust lands on the Flathead Reservation in Montana, Umatilla Reservation in Oregon, and the Nez Perce Reservation in Idaho.

Where the intestate leaves neither issue, father, mother, brother, or sister surviving him, but leaves nieces and nephews, as is the case here, it appears that Montana and Oregon have held, as of February 4, 1974, the surviving nieces and nephews inherit per capita, while Idaho has held they would take by representation or per stirpes. See R.C.M. 1947 § 91-403; In re Bronson's Estate, 389 P.2d 818, 141 Mont. 548; Opinions of the Attorney General (Oregon), 14 Op. Att'y Gen. (1928-30)33. O.R.S. 1969, c. 591, § 22; Idaho Code, § 15-2-3(c).

Kindred of the half blood, as are the Appellants, inherit equally with those of the whole blood, unless the estate came to the decedent by descent, devise, or gift from an ancestor, in which case those not of the blood of such ancestor are excluded.

It appears that decedent may have acquired parts of his estate by descent, devise or gift from an ancestor not of the blood of Appellants. Consequently, Appellants, as to those parts, would apparently have to be excluded.

Accordingly, the matter should be remanded to Judge Snashall for the purpose of reinstating Edith B. Williams George and Betty Jean Samuels Bueno, as apparent heirs at law of the decedent and

participants in the compromise settlement and for reexamination of the interests each heir at law would take under the laws of the state where each of the properties is situated.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, IT IS ORDERED that the Modification Order dated July 21, 1977, be and the same is VOIDED and the Order Determining Heirs, dated March 25, 1977, be modified after reexamination in accordance with the Board's dictates set forth, supra.

Mitchell J. Sabagh
Administrative Judge

We concur:

Alexander H. Wilson
Chief Administrative Judge

Wm. Philip Horton
Administrative Judge